JOHN B. MINOR.

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Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS

INDEX TO ANNOTATION OF THE LAWYERS' REPORTS, ANNOTATED

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CASE AND COMMENT

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John B. Minor.

To name any person as the greatest teacher of the law that has arisen in this country would doubtless arouse some dissent. But it is safe to say that for this position the name of John Barbee Minor would receive the unanimous vote of the lawyers of Virginia, if not of the entire South. In the North he is comparatively little known. This is doubtless due in part to the fact that a teacher's fame is usually limited to the locality where his pupils live; but it may also be that a certain provincialism makes many lawyers in some of the older states too unready to recognize that there are great legal minds in other states. For fifty years Professor Minor, or, as he chose to be called, Mr. Minor, was a teacher of law at the University of Virginia, and had many pupils who became eminent in professional and public life. It is their delight to say that his career as a teacher of law was, not only the longest, but the ablest, known to Anglo-Saxon jurisprudence. One of his older pupils declares that he "has exerted, and still indirectly exerts, a wider influence for good upon society in the United States than any man who has lived in this generation."

The facts of his career are, in brief, these: He was born in Louisa county, Virginia, June 2, 1813, the youngest of nine children of Launcelot and Elizabeth Minor. At the age of sixteen, being in delicate health, he traveled through Virginia on horseback as a newspaper agent and collector. He then walked to Kenyon College, Ohio, where for a year he was a classmate of David Davis and Edwin M. Stanton. He then walked for health and recreation through New York and Ohio. Returning home, he entered the University of Virginia in January, 1831, and remained there for three sessions, graduating in several academic schools and receiving the degree of B. L. in June, 1834. While there his teacher of law was Professor John A. G. Davis, in whose family he taught school during his course, and whose sister he afterward married. He began practising law at Buchanan, Botecourt county, but six years later moved to Charlottesville and formed a partnership with his brother Lucian, who was afterwards professor of law in William and Mary College. At the age of thirty-two John B. Minor was elected professor of law in the University of Virginia, and was the sole teacher of law there until 1851. In 1870 he began a summer course of law lectures, which is said to have been the first summer school of this kind in this country. This summer school in 1874 numbered twenty members, but from that time rapidly increased until it reached a maximum of one hundred and twenty-one. The first and second volumes of his "Institutes of Common and Statute Law" were published in 1875, the fourth volume in 1878, while the third volume, which was long used in pamphlet form by his classes, was first published, complete, in two parts, in 1895. He published an "Exposition of the Law of Crimes and Punishments" in 1894. He was thrice married, and left a

widow, four daughters and two sons surviving him. For the last forty-two years of his life he was a member of the Protestant Episcopal Church.

Professor Minor's characteristics as a teacher were enthusiasm for his work, profound personal interest in his pupils, extraordinary clearness of statement, pointedness of illustration, forcefulness and eloquence of language uttered in conversational style, and peculiar skill in questioning his pupils to test the accuracy of their knowledge. Like every really great teacher he desired quite as much to develop true character in his pupils as to train their intellect. His unbounded admiration for the common law made him too conservative in his attitude toward change, but it was the source of a stimulating enthusiasm in his teaching.

As an author Professor Minor's fame chiefly rests on his work known as the Institutes, which Senator Daniel says "cannot be surpassed as a *vade mecum* of the law. It is like a statue, solid, compact, clean cut." He adds: "Minor's Institutes contain more law in fewer words than any work with which I am acquainted."

The personal qualities of Professor Minor have already been somewhat indicated. The physical weakness of his early life was overcome so completely that he became capable of almost unlimited labor and endurance. He was a man of fine presence and commanding stature, 6 feet high, erect, compact, and well proportioned. He had great firmness and strong will, but was tender and affectionate. His home was notable for its hospitality, and his charity was unstinted. His broad sympathies and his religious earnestness made him for a long period the superintendent of a Sunday school of slaves, and he also taught for many years a Sunday morning Bible class of students, who received their last lesson in his study after he was unable to walk to the lecture room. His firm hold on the Christian faith, and his constant effort to live by its teachings, are described as "the master chord in his life, the source of that rare union of sweetness and dignity, of gentleness with firmness, that helped to make up his charming personality."

In recognition of Professor Minor's eminence the degree of LL. D. was conferred upon him by the universities of Washington and Lee and of Columbia; and on the fiftieth anniversary of his entrance upon his work of teaching the law a life size marble bust was presented to the university library by the law alumni, and mounted on a polished pedestal inscribed with these words: "He taught the law and the reason thereof." It was a beautiful crowning of his career, which was then almost ended. A few weeks later, on July 29, 1895, his life was finished.

The Burning of the Helpless.

If the protection of the helpless is ever the duty of the state, such duty certainly requires a greater care for the prevention of fatal fires in schools, orphan asylums, hospitals, and similar institutions. Most day-schools kept in buildings more than two stories high need better fire escapes and better fire drills for the pupils. The so-called drills which they have are often little more than a farce. But the most crying need is in those school dormitories, hospitals, orphanages, and homes for the helpless, the friendless, or the aged, where many people under a single roof sleep every night in imminent peril of cremation. The burning of normal school pupils at Fredonia, New York, and the burning of orphans at Rochester, New York, have recently startled the public to some appreciation of these dangers. Legislators who do not count the protection of human life less important than game laws or regulation of pawnbrokers may well give attention to this subject.

A Public Training in Brutality.

Training boys to be bullies at the public expense is not the proper business of the West Point Military Academy as the people of the country understand it. The hazing that has been carried on there is of the same nature, only more vicious, as that which was formerly common in other schools where boorish students predominated. It is true that some men of good type who have once participated in such practices will be found to argue for their justification. They will insist that there is much good done in this way by correcting the faults of the victim. But to justify an unprovoked and brutal assault upon a man for the purpose of chastening his spirit is an exhibition of reasoning quite as peculiar as that which would justify robbing a man of his money to cure him of avarice.

The meanest traits of human nature exhibit themselves in these practices. Those who are drawn into them by the spirit of innocent fun are always minor factors in the proceedings.

At the front will invariably be found those brutes that delight in making others suffer and those cowards who dare not meet an antagonist on equal terms. After these characteristics have been fully developed by long exercise these men will be commissioned with military authority over others. When trained in brutality they are supposed to be "officers and gentlemen." The only redeeming feature in the conditions revealed by the West Point investigation is the voluntary, and no doubt sincere, announcement by the cadets themselves, that the vicious practices of hazing are abolished.

A Parent's Risks.

For continued mischief of children, damaging a contractor's property on their father's premises, the father has been found by an English jury in Ipswich county court to be liable in damages, because he took no steps to stop the wrongdoing of the children after he had knowledge of it. The London Law Journal says that some difficulty was found by counsel on both sides in finding the principle of law governing the case, and that it was admitted that no authority directly in point could be cited. Two grounds for the decision are suggested by the Journal, one that the father was a bailee of the property which was lawfully on his premises, and for that reason liable for gross negligence of his servants and persons under his control; the other, that the father may be considered as in charge of the mischievous boys, and liable for the damage done by them on sufficient proof of *scienter*.

Commenting on this, the New York Law Journal thinks the latter ground the stronger, and says: "Not in any humorous spirit, but with perfect seriousness, the acts of a small boy may be likened to those of a dangerous animal. . . . It is not necessary to go so far as to hold a father an insurer against the consequences of malicious mischief, but, where *scienter* is shown, as in the case under consideration, and he refrains from exercising proper control, he may, in our judgment, legitimately, according to principle, and very justly, be held liable. It may be remarked of this English case that its effect is to work out to a limited extent a parent's liability for the torts of his children, and we think there is better reason for such result than there was for the common-law rule rendering a husband liable for the torts of his wife."

The theory that parents are liable for damages done by children known to be dangerous but running at large would be a new graft upon our law of domestic relations. If it should live it would make a very thrifty branch and bear a fine crop of litigation. It would be a partial adoption of the Chinese theory of parental responsibility, under which, it is said, both father and son may be beheaded for some crime of the son because the latter is guilty of the crime and the former guilty of rearing the criminal. But in all seriousness there is much reason in support of this novel decision.

How Congress Can Legislate for the States.

The famous Hibernianism of an attorney who assured the court that if the argument he had just made was bad, he could make another equally "conclusive," is finely illustrated by the advocates of national control over insurance. They bring up one argument after another, all equally "conclusive," to show that Congress has power to assume the regulation of that business. Their theory that insurance is commerce, which was exposed sometime since, in these columns, is abandoned by the latest advocate, who offers an entirely new scheme for nationalizing insurance. Of him the editor of "Rough Notes," in which he propounds his plan, says that he is a lawyer "long interested in insurance litigation of all kinds; a digester of all reported insurance decisions for years, a lawyer who is now making a specialty of insurance law" as well as a law school lecturer and writer for law magazines on the subject of insurance. His conclusions on the subject are therefore entitled to fair consideration.

His plan is, in brief, that Congress shall make an Insurance Code for the District of Columbia, make it a means for Federal revenue, authorize the formation or re-incorporation in that District of insurance companies which shall be entitled to do business in every state of the Union, without the consent of such governments, make the District of Columbia the place of all contracts of such companies anywhere in the United States, and establish a standard policy. He finds a source of the power of Congress to execute this plan in the United States Constitution, art. I. § 8, clauses 17 and 18, giving Congress power to lay taxes; to provide, among other things, for the "general welfare," and "to exercise

exclusive legislation in all cases whatsoever" over the District of Columbia, as well as to make all laws necessary and proper for carrying the foregoing powers into execution. His contention is, that in legislating for the District of Columbia, Congress acts in "the character of the legislature of the Union," and thereby binds the nation.

Chief Justice Marshall's language plainly to this effect is quoted from his opinion in the case of Cohens v. Virginia, 6 Wheat. 264, 5 L. ed. 257. But the truth is that all such language of the Chief Justice was used, not in support of the proposition that such statutes for the District could be operative outside the District, to override state laws, but in support of the jurisdiction of the Supreme Court of the United States to review the decision of the Virginia court by writ of error. The jurisdiction is upheld on the ground that, by denying validity or effect to an act of Congress for the District, the decision is against "a law of the United States" within the meaning of the judiciary act.

Having established the jurisdiction of the court, the Chief Justice proceeds, in another opinion, to determine the merits of the case, on which he says two questions arise: First, Does the act of Congress for the District purport to be operative beyond the District? And second, If it does, is it constitutional? The decision was that the law could not be construed to imply any intention to operate beyond the limits of the District. Therefore, the Chief Justice declares that the power of Congress to make it so operative is a "purely speculative" question, which he declines either to decide or discuss. In this state of things, it is hardly convincing to quote the language used by the Chief Justice with sole reference to the jurisdiction of the court as an authority on the question of the congressional power that he expressly refuses even to consider.

In what sense does the legislation of Congress for the District of Columbia "bind the nation?" Doubtless in this sense only, that all the enactments of Congress, whether made for a limited territory or for the whole Union, are binding on the nation just to that extent to which they are valid and operative. An act of Congress for Alaska or for the District of Columbia is, within the restricted limits of its valid operation, binding on the nation as the authorized act of the national legislature, but its force and effect as law is limited to the district or territory for which it is made. It is not, and cannot be made, to operate, like an act of bankruptcy, throughout all the United States.

The theory that Congress, by virtue of its power to legislate for the District of Columbia, can indirectly "exercise exclusive jurisdiction in all cases whatsoever," not only over that District, but throughout all the United States, by the ingenious device of legislation directly for the District, but with a declaration at the same time that the laws are intended to bind the states, seems to be revolutionary. The adoption of that theory would be the practical abolition of all the powers reserved to the respective states by the Federal Constitution. If it applies to insurance it applies to "all cases whatsoever," and the state legislation on every subject may be overridden by Congress. To state the amazing results of the theory is a sufficient comment upon it.

Legislative "Words without Knowledge."

A half-witted hoodlum with a loaded machine gun is not more dangerous than a reckless legislator with a copious vocabulary. The astounding possibilities of a blunderbuss enactment are vividly shown by a proposed law, which the press reports say has been introduced into the New York legislature at the request of the medical societies, to amend the statutes relating to the unlawful practice of medicine, so as to include this provision:

"Any person shall be regarded as practising medicine, within the meaning of this act, who shall prescribe, direct, recommend, or advise for the use of any other person, any remedy or agent whatsoever, whether with or without the use of any medicine, drug, instrument, or other appliance, for the treatment, relief, or cure of any wound, fracture, or bodily injury, infirmity, physical or mental, or other defect or disease."

If this becomes a law, it will be a misdemeanor punishable by fine and imprisonment, for one friend to advise another that a hot lemonade will be good for his cold. An anxious mother would violate such a law every time she gave her child honey for hoarseness, or put goose grease on its nose for the snuffles. It would be a crime to recommend larger shoes as a remedy for corns. Such a law making it an offense to give gratuitous advice from parent to child or friend to friend respecting the use of common and simple remedies, would make the legislators who should

so enact the targets of caustic ridicule. The chances of the passage of such a bill can hardly be good.

Unlicensed persons who make it a business to treat ailments for a compensation are clearly within the proper range of the police power, so far as they give any treatment that is dangerous or fraudulent in character. By general consent the right to give drugs is too dangerous to be exercised by people who have not had proper medical education. But there are kinds of treatments, such as massage, baths, etc., which are not only free from the danger that exists in the use of powerful drugs, but which actually cure serious diseases that drugs cannot wholly remedy. Cases that have baffled the most eminent physicians after years of treatment are sometimes cured by these simple natural agencies, administered by unlicensed persons. Indisputable evidence to this effect is abundant, and can be furnished by men and women of the highest character and intelligence, including clergymen, lawyers, and others who have been cured by such treatment, and also by honest physicians who have previously treated these cases and given them up as hopeless. A law that should prevent such treatment would be a crime against humanity.

It might be proper to require all who treat diseases by any agencies whatever, as a business, to be licensed. But if those whose treatment is limited to these simple natural agencies without the use of drugs are to be included in such requirement, the conditions of their licenses should certainly be very different from those established for the licensing of physicians who use drugs. To require of them such a course of study and such an examination as are given to regular physicians would be unreasonable. It would be only an indirect way to outlaw all cures without drugs. The aim of all legal restrictions on such business should be merely to protect the people. Anything beyond this would be an odious, oppressive, and unconstitutional monopoly. The proposed New York enactment is clearly in the interest of the doctors alone, and not of the people.

Alleged Conflict between Norwood v. Baker and Parsons v. District of Columbia.

The case of Parsons *v.* District of Columbia, 170 U. S. 45, 42 L. ed. 942, in which the Supreme Court of the United States upheld front-foot assessments for water mains in streets, seems to be the cover under which those courts that wish to escape from the authority of Norwood *v.* Baker, 172 U. S. 269, 43 L. ed. 443, attempt to seek refuge. But it will hardly shelter them. A distinction is suggested by an article in the Central Law Journal, Vol. 51, page 43, which points out that the Fourteenth Amendment, under which the assessment in the Norwood Case was condemned, does not apply to legislation for the District of Columbia, but only to state laws. This argument, however, seems to fail because the Norwood Case expressly holds that assessments in excess of benefits constitute a taking of private property for public use without just compensation, and such taking is prohibited by the Fifth Amendment, which does apply to acts of Congress. But there are sufficient reasons why the Parsons Case cannot be deemed to conflict with the Norwood Case. No question was made in the Parsons Case as to the unconstitutionality of an assessment by reason of its exceeding the benefits received, and there was in fact nothing to show that there was any such excess of assessments over benefits; but the very gist of the Norwood Case was the unconstitutionality of assessments which exceeded benefits. And in that case the court, distinguishing the Parsons Case, expressly says: "If the cost of laying the water mains in question in that case had exceeded the value of the property specially assessed, or had been in excess of any benefits received by that property, a different question would have been presented." The fact that there was a front-foot assessment in the Parsons Case seems to have caused some confusion of thought. There ought to be no difficulty in understanding that a mere distribution of the amount to be charged upon abutting owners by a front-foot apportionment does not necessarily operate unfairly as between them, or impose upon any of them a burden greater than the benefit received, and it ought to be equally clear that there may be cases in which this apportionment will not be fair as between the respective lot-owners, and that, whether this is so or not, the total cost of the work may be greater than the benefits which the abutting owners receive. To make a conclusive assumption that such owners must necessarily be benefited to an amount equal to the total cost of the work, however great that may be, is purely arbitrary, and not an act of reason.

Index to Notes

IN

LAWYERS' REPORTS, ANNOTATED.

Book 50, Parts 1 and 2.

Mentioning only complete notes therein contained, without including mere reference notes to earlier annotations.

The part containing any note indexed will be sent with CASE AND COMMENT for one year for $1.

Among the New Decisions.

Actions.

The right to sue in one action for injuries both to person and to property caused by the same tort is sustained in King *v.* Chicago, M. & St. P. R. Co. (Minn.) 50 L. R. A. 161, on the ground that the claims are but separate items of damages constituting one cause of action.

Arbitration.

Submission of authorities to an arbitrator after the close of the testimony, where it is expressly agreed that neither party is to be represented by counsel, is held, in Hewitt *v.* Reed City (Mich.) 50 L. R. A. 128, to be a violation of the spirit of the submission which will avoid the award.

Assumpsit.

A duress which will make the payment of taxes involuntary so as to authorize the recovery back of the money paid is held, in St. Anthony & D. Elevator Co. *v.* Soucie (N. D.) 50 L. R. A. 262, to be effected by a distress for taxes made without any actual seizure of the property, where this consisted

of grain in an elevator, by the mere notice of seizure followed by an advertisement of the property for sale.

Banks.

An honest mistake of a banker as to the law concerning holidays and days of grace, about which able lawyers and judges are not agreed, is held, in Morris *v.* Union National Bank (S. D.) 50 L. R. A. 182, not to make the bank liable for failure to protest a note until the day following that on which the court finally holds that it should have been done.

Bonds.

The sureties on the official bond of a mayor are held, in State *ex rel.* McLauren *v.* McDaniel (Miss.) 50 L. R. A. 118, to be liable for his act in causing a person's arrest without a warrant, and trying, convicting, and sentencing him for an offense not made punishable by the ordinances of the city, under authority of which he claimed to act.

Carriers.

An ordinance intended to prevent or remedy an abuse of the street-railway transfer system by making it unlawful to give away or sell any such transfer is upheld in *Ex parte* Lorenzen (Cal.) 50 L. R. A. 55, against the contentions that it attempts to enforce private contracts by penal legislation and that it is an unlawful deprivation of property.

The negligent handling of a derrick near a railroad track by employees of the state is held, in New York, N. H. & H. R. Co. *v.* Baker (C. C. A. 2d C.) 50 L. R. A. 201, not sufficient to make the railroad company liable for injuries to a passenger on a train who was injured in consequence.

Checks.

Payment to a collecting bank of a check bearing the forged indorsement of the payee's name is held, in Land Title & Trust Co. *v.* Northwestern Nat. Bank (Pa.) 50 L. R. A. 75, not to give the drawee bank a right to recover back the proceeds on the theory that the collecting bank had guaranteed the indorsement, when the drawee had drawn the check on itself, and delivered it to a person who falsely personated the payee named therein, for money to be loaned on a mortgage.

Constitutional Law.

A statute making it a crime for a man to marry a woman in order to escape a prosecution for seduction, and afterwards to desert her without just cause, is held, in Morris *v.* Stout (Iowa) 50 L. R. A. 97, not to constitute a violation of the constitutional provision requiring laws of a general nature to have a uniform operation, since it simply imposes a liability for the doing of specific acts, and brings every person so doing within its operation.

Contempt.

A newspaper corporation which deliberately seeks to influence judicial action by the publication of articles threatening judges with public odium and reprobation in case they decide a pending case in a particular way is held, in State *v.* Bee Publishing Co. (Neb.) 50 L. R. A. 195, to be guilty of constructive contempt.

Contracts.

A municipal grant to a street-railway company of the privilege of using its streets for the conveyance of electricity is held, in Clarksburg Electric Light Co. *v.* Clarksburg (W. Va.) 50 L. R. A. 142, to constitute a valid franchise and contract within the protection of the Federal Constitution; but an attempt to make such franchise exclusive was held void.

A contract by the owner of an ice machine, to discontinue the manufacture of ice in a certain town for the term of five years, is held, in Tuscaloosa Ice Mfg. Co. *v.* Williams (Ala.) 50 L. R. A. 175, to be void as against public policy because of the restraint upon trade and the creation of a monopoly in the supply of ice within that town, when the contract is made without any sale of the business, merely to benefit a rival ice plant.

A contract embodied in telegrams is held, in Brewer *v.* Horst-Lachmund Co. (Cal.) 50 L. R. A. 240, to be sufficient under the statute of frauds. The case is accompanied by a note reviewing the other authorities on this question.

Corporations.

The right of directors who are also creditors of a corporation to enforce a constitutional liability of stockholders for the payment of their debts is enforced in Janney *v.* Minneapolis Industrial Exposition (Minn.) 50 L. R. A. 273.

Counties.

The general rule shown in a note in 39 L. R. A. 33, that counties are not liable for torts or negligence in the management of public institutions, is illustrated and applied in the case of Lefrois *v.* Monroe County (N. Y.) 50 L. R. A. 206, holding that a county maintaining a penitentiary and almshouse, the sewage from which contaminates a stream and the surrounding atmosphere, is not liable to an action therefor, although the county officers may be subject to an injunction to abate the nuisance.

Easements.

A condition in a deed that the grantee, his heirs and assigns, should never erect a building nearer the street than the one then standing is held, in Clapp *v.* Wilder (Mass.) 50 L. R. A. 120, to create a merely personal right, and not an easement appurtenant, where the grantor was an invalid living on adjoining premises, and declared his purpose to have the deed protect his view of the street.

Evidence.

Warehouse receipts, though made negotiable by statute, so that an indorsement thereon will transfer title, are held, in Anderson *v.* Portland Flouring Mills Co. (Or.) 50 L. R. A. 235, not to be within the rule which excludes parol evidence to establish liability upon commercial paper.

Executors and Administrators.

The administrator of one who during the owner's lifetime died in possession of chattels, under an agreement by which she was to have the use of them during her life and that of the owner, is held, in Salter *v.* Sutherland (Mich.) 50 L. R. A. 140, to have no title which will support an action for their possession against a third person who wrongfully took possession of them after the death of the bailee.

Exhibitions.

The owner of a private park who invites the public to it for the purpose of seeing an exhibition is held, in Sebeck *v.* Platt-Deutsche Volksfest Verein (N. J.) 50 L. R. A. 199, not to be relieved from responsibility for the safety of his guests by the fact that the exhibition is given by an independent contractor, but, having invited the people there, he must provide a safe place from which they may view the exhibition, and must use care in selecting a skilful and competent person to give the exhibition.

Garnishment.

A series of garnishments instituted by a creditor to tie up the wages of a laboring man until the expiration of the time during which they are exempt, and then appropriate them, is held, in Rustad *v.* Bishop (Minn.) 50 L. R. A. 168, to constitute a perversion of civil process which the courts cannot sanction.

Highways.

The duty of keeping highways reasonably safe for carriages is held, in Richardson *v.* Danvers (Mass.) 50 L. R. A. 127, not to require them to be kept safe for bicycles.

Husband and Wife.

Although the presumption generally, as shown by the note in 14 L. R. A. 364, is that a cohabitation which was meretricious in the beginning continues to be so, it is held, in Schuchart *v.* Schuchart (Kan.) 50 L. R. A. 180, that, where a man and woman were formally married, in good faith, intending to assume the marital relation, though one of them was in reality under disability of former marriage from which a decree of divorce that had been obtained was not yet effective, their continuance of cohabitation after the removal of the disability was sufficient to establish a common law marriage.

Injunction.

The right to an injunction to compel the restoration of a stairway in favor of the owner of an easement in the use of it was sustained in Ives *v.* Edison (Mich.) 50 L. R. A. 134, where after refusal of permission to change its

lecting bank had guaranteed the indorsement, when the drawee had drawn the check on

note reviewing the other authorities on this question.

location, and during the pendency of an appeal from a decision denying an injunction against invasion of the easement, the stairway had been removed from its original place. The fact that the cost of restoration might be greater than the injury to the complainant was not deemed sufficient to defeat the remedy in such a case.

A water company's compliance with the conditions of its contract as a condition of its right to relief by injunction against interference with the contract by city ordinances is held not necessary in Agua Pura Co. v. Las Vegas (N. M.) 50 L. R. A. 224, where the contract has not been forfeited and canceled, but remains valid.

Insurance.

A life insurance policy on a bankrupt's life which has no cash surrender value is held, in Morris v. Dodd (Ga.) 50 L. R. A. 33, to have been lawfully transferred by him to his wife within four months prior to his petition in bankruptcy, though the policy was previously payable to his legal representatives.

The conversion of a life policy into a nonforfeitable paid-up policy for a fixed term by a new contract on a default in the payment of premium is held, in Johnson v. New York Life Ins. Co. (Iowa) 50 L. R. A. 99, to make it unnecessary, in case of death after the expiration of the stipulated term, to give the statutory notice required as a basis for forfeiture or lapse of policy for nonpayment of premium, although substantially the same extension would have been given by statute without the new contract.

The failure of a subordinate lodge of a mutual benefit society to remit an assessment to the grand lodge is held, in Murphy v. Independent Order of the Sons and Daughters of Jacob (Miss.) 50 L. R. A. 111, not to forfeit the rights of a member, although the by-laws provide that the grand lodge shall not be held for neglect of duty of subordinate lodges.

A good-faith compromise agreement whereby a benefit society against which suit has been brought on a certificate issued upon the life of a member who has not been seen or heard of for nearly ten years agrees to pay the beneficiary a certain sum at once, and place the remainder of the amount in trust for a certain time, is held, in Sears v. Grand Lodge of A. O. U. W. (N. Y.) 50 L. R. A. 204, to give the beneficiary a right to the agreed cash payment, although before it is actually paid over the insured is proved to be living.

Levy.

Nonresidence within the meaning of a statute exempting personal property of residents, as well as under the attachment law, is held, in State v. Allen (W. Va.) 50 L. R. A. 284, to begin as soon as a person who has formed the intention of moving to another state starts to leave the state, although he has not yet got outside of it and has not acquired any domicil or residence in another state.

Libel.

Information given to detectives in regard to larceny, stating a suspicion, with a reason therefor, that a certain person is the thief, is held, in Shinglemeyer v. Wright (Mich.) 50 L. R. A. 129, to be privileged.

License.

A statute taxing vendors of merchandise according to the amount of their annual sales, and classifying them into retail and wholesale dealers and dealers at exchanges or boards of trade, who are taxed at different rates, is upheld, in Knisely v. Cotterel (Pa.) 50 L. R. A. 86, against the contention that it invades the personal liberty of the citizen and violates the requirement of uniformity, and similar objections.

On the question of the duty to instruct and warn servants as to perils, which is considered at length in a note in 44 L. R. A. 33, the case of Cincinnati, N. O. & T. P. R. Co. v. Gray (C. C. A. 6th C.) 50 L. R. A. 47, requires such instruction as to the dangers of a so-called automatic railroad switch.

Mines.

A cotenant of a mining claim upon which the annual assessment work has not been done is, in McCarthy v. Speed (S. D.) 50 L. R. A. 184, denied the right to relocate the claim, and thereby obtain title as against his cotenants.

The space of intersection which by U. S. Rev. Stat. § 2336, shall belong in case of intersecting veins to the prior location, with all ore or mineral contained therein, but subject to a right of way through it for the subsequent location, is held, in Calhoun Gold Min. Co. v. Ajax Gold Min. Co. (Colo.) 50 L. R. A. 209, not to be limited to the space in which the veins themselves intersect, but to include the entire space within which there is an in-

possession of them after the death of the bailee.

in Ives v. Edison (Mich.) 50 L. R. A. 134, where after refusal of permission to change its

tersection of the claims, and the cross veins within that space, but apexing within the limits of the prior location, are held to belong thereto.

Mortgages.

In case of grain grown on mortgaged land under contract giving the owner a fixed portion thereof for the use of the land, it is held, in Whithed v. St. Anthony & D. Elevator Co. (N. D.) 50 L. R. A. 254, that on foreclosure such share as falls due during the redemption period, and would have belonged to the owner except for foreclosure, will belong to the purchaser at foreclosure sale under a statute giving such purchasers the rents during the redemption period.

Municipal Corporations.

An *ultra vires* loan by municipal officials on the security of a mortgage is held, in Fergus Falls v. Fergus Falls Hotel Co. (Minn.) 50 L. R. A. 170, to be enforceable by foreclosure of the mortgage, and the fact that the act of the city officials is *ultra vires* is no protection to those who had bought the property after the mortgage was made, but with notice of it.

Negligence.

On the question of negligence by failing to anticipate what men of ordinary prudence and circumspection would not anticipate it is held, in Graney v. St. Louis, I. M. & S. R. Co. (Mo.) 50 L. R. A. 153, that a railroad company is not liable for injury to one standing at a street crossing while waiting for a train to pass, by being drawn under the train by suction.

Officers.

A public office is held, in Moore v. Strickling (W. Va.) 50 L. R. A. 279, not to constitute property within the meaning of a constitutional provision against deprivation of property without due process of law, and a public officer who resorts to a house of ill fame for immoral purposes is held to be guilty of gross immorality for which he forfeits his office.

Physicians.

A physician who assures an attendant that there is no danger in assisting him in caring for a wound which the physician knows may communicate an infectious poison is held, in Edwards v. Lamb (N. H.) 50 L. R. A. 160, to be liable for injuries which do result from the poison, although he was ignorant of slight abrasions on the attendant's hands, in the absence of which there would have been no danger.

Schools.

The right to exclude unvaccinated pupils from the public schools in obedience to the orders of a board of health is sustained, in Blue v. Beach (Ind.) 50 L. R. A. 64, although there is no statute expressly making vaccination compulsory or imposing it as a condition of attending school, and the pupil excluded has not been exposed to smallpox, if people in the community have been so exposed.

Search Warrants.

Statutory authority to issue search warrants for forged bank notes or other forged instruments, or the tools, machinery, or materials for making them, is held, in White v. Wagar (Ill.) 50 L. R. A. 60, not to extend to a search for forged trademarks, labels, caps, corks, cases, bottles, boxes, or the machinery for making them, and a search warrant which merely directs the bringing of the property is held void, where the statute provides for bringing both the property and the person in whose possession it is found.

Statutes.

A repeal of an ordinance requiring a license tax for carrying on the business of real estate agents is held, in Denning v. Yount (Kan.) 50 L. R. A. 103, not to operate retrospectively so as to make valid a contract by such an agent which was originally invalid because he had not complied with the ordinance.

Taxes.

A collateral inheritance tax for the use of the state, imposed by a statute which makes no provision for notice to heirs, legatees, or devisees, is held, in Ferry v. Campbell (Iowa) 50 L. R. A. 92, to be unconstitutional as a deprivation of property without due process of law. But a retroactive amendment curing such defect is held valid and operative as to the estate of a person who died before the

the beneficiary a right to the agreed cash payment, although before it is actually paid over the insured is proved to be living.

209, not to be limited to the space in which the veins themselves intersect, but to include the entire space within which there is an in-

amendment, at least so far as it affects personal property not yet distributed.

A Masonic lodge building is held, in Fitterer v. Crawford (Mo.) 50 L. R. A. 191, following Philadelphia v. Masonic Home (Pa.) 23 L. R. A. 545, and Newport v. Masonic Temple Asso. (Ky.) 49 L. R. A. 252, not to constitute property devoted to purely charitable purposes so as to be exempt from taxation.

A statute taxing grain in elevators, warehouses, etc., in the name of the owner of such storehouses is upheld in Minneapolis & N. Elevator Co. v. Traill County (N. D.) 50 L. R. A. 266, against various contentions, such as that it violates the rule of uniformity.

Telephones.

An agreement by the agent of a telephone company to deliver a message at destination in consideration of an extra charge is held, in Brown v. Cumberland Teleph. & Teleg. Co. (Tenn.) 50 L. R. A. 277, to be binding on the company, notwithstanding the agent's instructions to the contrary, where these were habitually disregarded.

Voters and Elections.

A faction of a political party which is not, and does not claim to be, in itself a distinct political party, is, in Weaver v. Toney (Ky.) 50 L. R. A. 105, denied the right to have inspectors at an election.

Recent Articles in Law Journals and Reviews.

"Repudiation of Contracts."—14 Harvard Law Review, 317.

"Ultra Vires Corporation Leases."—14 Harvard Law Review, 332.

"Crossed Cheques."—37 Canada Law Journal, 5.

"Restraint of Trade by Societies Which Are Not Trade Unions."—21 Canadian Law Times, 1.

"A Mere Right to Sue."—10 Madras Law Journal, 309.

"The Doctrine of Hochester v. De La Tour (Repudiation as Nonperformance)."—6 Western Reserve Law Journal, 163.

"Reforms in Jury Trials."—63 Albany Law Journal, 10.

"Parent's Liability for Necessaries Furnished Minor Child."—6 Virginia Law Register, 585.

"Essentials of a Valid Marriage in Virginia."—6 Virginia Law Register, 598.

"Prescriptive Right to Light and Air."—2 Bombay Law Reporter, 277.

"The Legal Status of Our New Possessions."—6 Western Reserve Law Journal, 189.

"The Part Taken by Courts of Justice in the Development of International Law."—10 Yale Law Journal, 1.

"The Status of an Attorney Defending a Guilty Client."—10 Yale Law Journal, 24.

"The Burden of Loss as an Incident of the Right to the Specific Performance of a Contract."—1 Columbia Law Review, 1.

"The History of the Law of Nature: A Preliminary Study."—1 Columbia Law Review, 11.

"Another Philippine Constitutional Question; Delegation of Legislative Power to the President."—1 Columbia Law Review, 33.

"The Courts and Politics."—12 Green Bag, 620.

"The Proprietary Government of Carolina."—12 Green Bag, 644.

"Foreclosure in the Federal Courts."—51 Central Law Journal, 478.

"Construction of Laws Requiring Life Insurance Companies Doing Business in That State to Mail Notice Informing Persons Whose Lives are Insured of the Date, Among Other Things, of Maturity of Premiums."—52 Central Law Journal, 4.

"The Application of the Rule against Perpetuities to Certain Devises."—52 Central Law Journal, 26.

"Trademark Laws and Regulations Recently Passed by Foreign Countries."—110 Law Times, 153.

"The Three Present Menaces: The General Issue, The General Verdict, Personal Justice."—40 American Law Register, 1.

"Dependent Relative Revocation of Wills."—40 American Law Register, N. S. 18.

"Sanitary Legislation of the Nineteenth Century."—65 Justice of the Peace, 33.

"Carriers by Water; Their Relations with Passengers."—52 Central Law Journal, 65.

"The Struggle for Constitutional Reform."—10 Yale Law Journal, 73.

"Town Representation in Connecticut."—10 Yale Law Journal, 80.

"A Defense of the Negotiable Instruments Act.—10 Yale Law Journal, 84.

"Territory and the Constitution."—10 Yale Law Journal, 99.

A physician who assures an attendant that there is no danger in assisting him in caring

of law. But a retroactive amendment curing such defect is held valid and operative as to the estate of a person who died before the

New Books.

"The Law of Combinations." (Including Conspiracy, Restraints of Trade, and Anti-Trust Laws.) By Authur J. Eldy. (Callaghan & Co., Chicago, Ill.) 2 Vols. $12.

"Kinney's Illinois Digest." Vol 6. (Callaghan & Co.) $5.

"Glanville." By John Beames. [Legal Classics Series.] (John Byrne & Co., Washington, D. C.) 1 Vol. $3.

"Garland's Louisiana Code of Practice." Edited by Solomon Wolff. (F. F. Hansell & Bro., New Orleans, La.) $15.

"Taxation of Business Corporations in New York." By John Henry Hammond. (Baker, Voorhis, & Co., New York.) 1 Vol. $2.75.

"Morrison's Digest of Colorado Decisions." (The Smith-Brooks Printing Co., Denver, Colo.) 1 Vol. $7.50.

"Michigan Statute Law." (Abridged.) By L. M. Miller. (C. E. Barthell, Ann Arbor, Mich.) 1 Vol. $3.

"Bender's Lawyer's Diary for 1901." With Court Rules and Directory of New York Lawyers. (Matthew Bender, Albany, N. Y.) $2.

The Humorous Side.

EQUIVALENT TO A DISCHARGE.—A United States Commissioner in Florida, who may possibly have had some sense of humor, made the following decision in favor of a sailor who applied for discharge from a vessel on account of ill treatment by the master. Decided: That knocking a man overboard, throwing him onto the dock twice, keeping a dog chained in the gangway, and a loaded pistol ready to shoot him if he came aboard, was equivalent to a discharge. It was so ordered.

A "PINAFORE" TRIAL.—The following opinion is sent us by an attorney as one recently handed down in a case where plaintiff got judgment on a complaint which stated no cause of action, the answer set up no defense, and no demurrer was filed to either:

"This is the case of —— v. ——. Plaintiff's counsel filed his petition, which stated no cause of action. Defendant's counsel failed to demur to the petition and filed his answer. The answer set up no defense, and the plaintiff failed to demur to the answer. Judgment for plaintiff for $75, the amount prayed for in the petition."

A FRONTIER JUDGE.—A letter from a Western attorney living somewhere this side of Hawaii gives the following interesting information to explain delay in the matter of an estate. He says: "In the first place I took this matter up for Mr. D—, and I found as I progressed with it that the judge of probate was old and childish and was not attending to his business, in fact knew nothing about the business; would not record the papers as the law required, nor did he keep any record of his proceedings, but carried the papers around in his satchel, and I took them into my possession and dropped the matter until a new judge was elected. . . .

"You will understand that this is a new county and the salary of county judge is small, and that no one but some old fogy would take the office; and in this case during a term of four years the county judge has not had a case before him, and, not knowing anything about the duties of his office, could do nothing, and then he would not be advised, so the only thing to do was to drop matters until we could elect a judge to fill the place.

"The old man contended that he was to have the office for life, and we had some trouble to make him believe that a successor to him was possible.

"Truly yours, ——."

"THE POET OF THE CHEMUNG COUNTY BAR."—In response to this toast, Roswell R. Moss, of Elmira, New York, at a banquet about a year since, read the following poem:

THE LAWYERS OF CHEMUNG.

A Ballad of the Bar,
By One of Them.

The limbs of the law of Chemung,
Who labor for others, and fees,
Their talents shall ne'er be un-sung,
While a bard can sing rhymes such as these!
For justice and right they make pleas.
Their fame, it has traveled afar.
They are known by all the police.
They practise at every bar.

By their eloquence juries are—hung.
They win, when the court so decrees;
If they lose, 'tis their clients who're stung.
They speak the whole truth, when they please.
They lie, on their couches, at ease.
They're witty and wise; yes, they are.
For they drink, of knowledge, the lees.
It's libel their good name to mar.

From the ranks of the people—they're sprung:
The public they love well - to squeeze.
They tower their brothers among.
Their arguments, sound—as the breeze.
Their prayers are, on unbended knees.
Low railings distinguish their bar.
They're hummers! They're busy as bees.
In the state there is not their par.

ENVOY.

Ye learn'd legal lights of Chemung,
Your earnings are more than your fees!
May your virtues ever be sung,
In sentiments like unto these!

(Repudiation as Nonperformance)."—6 Western Reserve Law Journal, 163.

"Reforms in Jury Trials."—63 Albany Law Journal, 10.

"A Defense of the Negotiable Instruments Act.—10 Yale Law Journal, 84.

"Territory and the Constitution."—10 Yale Law Journal, 99.